IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DENISE EARLEY,	:	**CIVIL ACTION**
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
INNOVEX (NORTH AMERICA) INC., et al.,	:	
	:	
Defendants.	:	**NO. 02-2130**

Reed, S.J. **June 10, 2002**

MEMORANDUM

Presently before this Court are the defendants' response to this Court's Rule To Show Cause why this action should not be remanded (Document No. 2), plaintiff Denise Earley's ("Ms. Earley") motion to remand for lack of subject matter jurisdiction due to an insufficient amount in controversy (Document No. 4) and defendants' response thereto. The four defendants in this action are Innovex (North America) Inc. ("Innovex"), Quintiles Transnational Corp., of which Innovex is a wholly owned subsidiary, Daniel Yarnell ("Yarnell"), Innovex's National Sales Director, and Robert Wilson ("Wilson"), who Innovex employed as a Regional Sales Director. The defendants removed this action to federal court after declining the plaintiff's stipulation that the total amount in controversy is less than the $75,000 requirement for federal diversity jurisdiction. See 28 U.S.C. § 1332(a) (providing that, "[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs and is between (1) citizens of different States...).[1] For

[1]It is apparent from the complaint as well as the notice of removal that all of the parties are of diverse citizenship for Section 1332 purposes. I therefore conclude that the diversity of citizenship element has been conclusively established.

the reasons set forth below, plaintiff's motion to remand this action will be granted.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed this action in the Court of Common Pleas of Philadelphia County, Pennsylvania, to recover two allegedly unpaid bonuses from her former employer, Innovex. The plaintiff alleges that defendant Innovex violated the express terms of its bonus pay out policy by refusing to pay her the two bonuses at issue. According to the Innovex bonus policy, a "District Manager must work through the end of the Bonus period and be employed at the time of the pay out." (Complaint, Exhibit A). The earliest projected pay out of the bonuses the plaintiff alleges to have earned was May 15, 2001, approximately two months after the plaintiff had left Innovex to take employment with one of Innovex's clients, Novartis. The Innovex bonus policy also states, however, that "Innovex reserves the right to interpret plan provisions and modify or discontinue the plan." (Id.). The plaintiff alleges Innovex exercised its right to "modify" the bonus plan when two of its agents under whom the plaintiff worked, defendants Yarnell and Wilson, represented to her in February, 2001 that she would still receive both of the bonus payments if she joined Novartis, which she did on March 20, 2001. Ms. Earley alleges that she relied upon these representations. She claims to have earned the two unpaid bonuses between August and December, 2000 and January and February, 2001. Plaintiff and defendants agree that the unpaid bonuses are worth up to $6,000 each.

Upon review of the Notice of Removal of the defendants, this Court ordered the defendants to show cause, no later than May 1, 2002, why this matter should not be remanded to the state court for want of jurisdiction. The plaintiff subsequently filed a motion for remand to state court. The defendants filed their Memorandum of Law in Support of Notice of Removal,

after which the plaintiff filed her reply to defendants' Response to Rule to Show Cause.

II. STANDARD OF REVIEW

Although the appropriate standard of review remains unresolved by the U.S. Court of Appeals for the Third Circuit, this Court has held that the burden of persuasion rests upon the defendants to establish the requisite amount in controversy by a preponderance of the evidence. See Mercante v. Preston Trucking Co., No. 96-5904, 1197 WL 230826, at *2 (E.D. Pa. May 1, 1997). To determine whether the defendants' burden has been met, this Court must rely "on the plaintiff's complaint at the time the Petition for Removal was filed." Werwinski v. Ford Motor Co., 286 F.3d 661, 666 (3d Cir. 2002) (quoting Steel Valley Auth. v. Union Switch & Signal Div., Am.. Standard, Inc., 809 F.2d 1006, 1010 (3d Cir. 1987)). An action may not be remanded to state court unless it is apparent to a "legal certainty" that the plaintiff's claim cannot meet the amount in controversy requirement. St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U.S. 283, 288-89 (1938). As master of her complaint, the plaintiff may keep her state law claims out of federal court "by eschewing claims based on federal law," or by pleading damages in an amount less than that to which she is legally entitled. See Caterpillar, Inc. v. Williams, 482 U.S. 386, 399 (1987); Petron Oil Co. v. Seitel Gas and Energy Inc., No. 97-0573, 1997 WL 408034, at *2 (E.D. Pa. July 18, 1997).

III. LEGAL ANALYSIS

Defendants contend that the amount in controversy requirement has been satisfied on the strength of two arguments. First, defendants believe that the claims against all of the defendants in the plaintiff's complaint must be aggregated because they are so "integrated" and "tied together by combination or conspiracy as to make the relief single." Cottman Transmission Sys.

v. Metro Distrib., 796 F. Supp. 838, 841 (E.D. Pa. 1992), vacated on other grounds, 36 F.3d 291 (3d. Cir. 1994). However, each of the complaint's *ad damnun* clauses limits the prayer for relief to "an amount less than $75,000" against all of the defendants named in each count. Even if all of the defendants were held jointly liable based on the defendants' theory, the total combined damages due would not exceed $74,999.99. Thus, this theory fails.

In the alternative defendants contend that plaintiff's claims of intentional misrepresentation and breach of contract constitute separate bases of recovery, not alternative theories of liability, and must be aggregated in the computation of the amount in controversy. Although the claims of a single plaintiff against a single defendant may generally be aggregated whether the claims are related to each other or not, two claims must not be aggregated if they "are alternative bases of recovery for the same harm under state law." C.D. Peacock, Inc. v. The Nieman Marcus Group, Inc., No. 97-5713, 1998 WL 111738, at *3 (E.D. Pa. March 9, 1998) (quoting Suber v. Chrysler Corp., 104 F.3d 578, 588 (3d Cir. 1997)). To aggregate the misrepresentation and breach of contract claims the defendants must persuade this Court that the plaintiff has suffered two, as opposed to one harm.

The defendants' argument is predicated upon the plaintiff's request for punitive damages in the fifth count of the complaint for intentional misrepresentation. Even though the five *ad damnum* clauses in the plaintiff's complaint limit the damages requested to "an amount less than $75,000," defendants argue that it is possible for the plaintiff to receive a $74,999.99 award including punitive damages on the misrepresentation claim, in addition to a $12,000 compensatory award on any of the other counts against the same defendant. Because of this possibility, the defendants argue, the plaintiff's total recovery meets the amount in controversy

requirement. The defendants' argument rests, however, on an erroneous belief that the mere availability of punitive damages renders the claim for intentional misrepresentation "qualitatively distinct," under the aggregation test applied in C.D. Peacock.

Plaintiff's claim for intentional misrepresentation in this action is not "qualitatively distinct" from her other contract based claims. The plaintiff alleges that defendant Innovex modified its contractual duty to her when defendants Yarnell and Wilson represented that she would no longer remain subject to the bonus pay out policy's requirement of continued employment. The defendant Innovex subsequently breached its modified contractual obligation to Ms. Earley by withholding two bonuses on the grounds that she was no longer an employee of Innovex on the pay out date. Thus, Yarnell and Wilson's representations to Ms. Earley are the sole basis upon which she claims to have been owed a contractual duty that the defendants breached.

The claim of intentional misrepresentation in Count V merely theorizes that by the same representations the defendants intentionally breached their contractual obligation to the plaintiff. The claim for intentional misrepresentation thus incorporates the very same facts as those upon which the plaintiff's other theories of liability rest. What's more, the claim for intentional misrepresentation does not allege a separate and distinct harm from the other Counts within the complaint.[2] The claim for intentional misrepresentation is not "qualitatively distinct" from the

[2]For example, in Count III, alleging detrimental reliance, plaintiff states, "The acts and omissions of the defendants have caused plaintiff to reasonably rely upon the defendants, all to the detriment and expense of the plaintiff for which the plaintiff is entitled a remedy." By way of comparison, in Count V plaintiff avers, "The intentional acts, omissions and representations of the defendants caused the plaintiff to reasonably rely on those acts, omissions and representations, at the expense of the plaintiff, for which the plaintiff is entitled a remedy." The "acts and omissions" to which Counts III and V refer are identical. The specific harm i.e., the

other contractual claims because it addresses exactly the same allegedly illegal conduct and resultant harm as the other Counts in the complaint. See C.D. Peacock, 1998 WL 111738, at *3.

Contrary to the defendants' arguments, it is of no moment that the plaintiff may be able to recover punitive damages under her claim for intentional misrepresentation. This Court held the claims in C.D. Peacock to be "qualitatively distinct," "not only as theories of liability, but also in terms of potential recoverable damages." Id. at *4. Claims are not, however, "qualitatively distinct" just because one claim forecloses punitive damages while another permits them. "[P]otential recoverable damages" as it was used in C.D. Peacock refers not to the amount of damages, but to the harm that the damages are intended to remedy. See id. (observing that tortious interference with contract "relates to past or present damage arising from an identifiable contract," while damages which follow from tortious interference with business relations are anticipated to occur in future). Under the law of Pennsylvania punitive damages are intended to deter and punish the defendant, not compensate the plaintiff. See G.J.D. v. Johnson, 552 Pa. 169, 713 A.2d 1127, 1129 (1998). Thus, Ms. Earley does not allege that she suffered a different or greater harm in her misrepresentation claim than the harm she alleges in the other counts of her complaint. She merely alleges that the defendant's conduct was sufficiently willful, wanton or careless to justify an award of punitive damages. G.J.D., 713 A.2d at1129. I must therefore conclude that the four claims in the plaintiff's complaint may not be aggregated for the purposes of meeting the amount in controversy requirement for federal diversity jurisdiction, as each claim constitutes an alternative theory of liability, not a separate basis for the calculation of damages.

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unpaid bonuses, is also identical. The two counts are only distinguishable because of the label of intentional conduct contained in Count V.

IV. CONCLUSION

For all of the foregoing reasons, I conclude that the defendants have not carried their burden of persuasion to show that the amount in controversy meets the $75,000 requirement for diversity subject matter jurisdiction under 28 U.S.C. § 1332(a).

An appropriate order follows.

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DENISE EARLEY,	:	**CIVIL ACTION**
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INNOVEX (NORTH AMERICA) INC., et. al.	:	
	:	
Defendants.	:	**NO. 02-2130**

ORDER

AND NOW this 10th day of June, 2002, upon consideration of the plaintiff's motion to remand this action to the Court of Common Pleas of Philadelphia County, Pennsylvania (Document No. 4), defendants' response thereto, as well as this Court's Rule To Show Cause, and having concluded, for the reasons pronounced in the foregoing memorandum, that the defendant has not shown by a preponderance of the evidence that the amount in controversy of this action satisfies the requirements of 28 U.S.C. § 1332(a), it is hereby **ORDERED** that the action is **REMANDED** to the Court of Common Pleas of Philadelphia County, Pennsylvania, at Civil Action No. 02-2130, for lack of subject matter jurisdiction.

The Clerk of Court shall forthwith return the record to the Prothonotary of the Court of Common Pleas of Philadelphia County and close this file.

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LOWELL A. REED, JR., S.J.